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PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES

Regulations of Cable Television
Definition of Complaint
Proposed Amendment: N.J.A.C. 14:18-1.2

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with approval of the Board of Public Utilities, Jeanne M. Fox, President; Frederick F. Butler, Commissioner; Carol J. Murphy, Commissioner, Connie O. Hughes, Commissioner and Jack Alter, Commissioner)

Authority: N.J.S.A. 48:5A-10

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

BPU Docket Number: CX04070612

Proposal Number: PRN 2004-395

A public hearing concerning the proposal will be held on Monday November 22, 2004 at 10:00 A.M. at:

Board of Public Utilities
Hearing Room, 8th Floor
Two Gateway Center
Newark, NJ 07102

Submit written comments by December 17, 2004 to:

Celeste M. Fasone, Director
Office of Cable Television
Two Gateway Center
Newark, NJ 07102

The agency proposal follows:

Summary

On August 18, 2004, the Board of Public Utilities authorized adoption of new rule, N.J.A.C. 14:18-6.7, based upon N.J.S.A. 48:5A-26.1, which requires the State's cable television operators to collect, retain, present for inspection and submit data on complaints received from their customers. The new rule was proposed at N.J.R. 1178(a). The rule became effective upon publication of its notice of adoption elsewhere in this issue of New Jersey Register.

Subsequent to the public hearing held on the new rule on March 29, 2004, the Office of Cable Television (OCTV) met with the cable television industry on several occasions, held numerous

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telephone conversations with the cable television industry and conducted field inspections to determine the impact of the rule as well as how the cable television industry captured and categorized complaints made by its subscribers. Although the Board and the OCTV believed that it was generally understood what a "complaint" was, it became evident that the OCTV and the cable television industry did not have the same understanding. The Board believes that a plain language reading of the statute requires cable television operators to collect, retain, present for inspection and submit data on all complaints received from their subscribers. This means that if a person calls and states that he or she has a complaint or makes a statement that expresses discontent or dissatisfaction with the cable television company, it is a complaint. The cable television industry disagreed, claiming that the general policy was to only capture complaints that were "escalated," that is, a call that went beyond the first line customer service representative (CSR). Escalation could include a call transferred to a supervisor, the caller being required to dial a different number, or the caller being instructed to write; but if the call was resolved by the CSR despite the initial concern, it would not be considered a complaint.

Therefore, the Board and the OCTV determined that it is necessary to propose a definition of complaint. That definition is proposed herein. The proposed definition will require cable television operators to record (on the form to be prescribed by the Director of the OCTV in accordance with the adopted new rule published elsewhere in this issue of New Jersey Register) all forms of contact in which a subscriber expresses dissatisfaction or discontent with an act, omission, product, service, service content or complement, term or condition of service received from the cable television operator. The record will not be limited to telephone calls, but to any reasonable means made to convey a complaint to the cable television operator, including TTY/TDD, facsimile, electronic mail and in person.

In proposing a definition, the Board looked to other regulatory bodies where a "complaint" was defined. The State of Vermont defines a "customer complaint" as "any situation in which customers report dissatisfaction to [the company]." The State of Massachusetts defines a complaint as "any written or verbal contact with a cable operator [where] a person expresses dissatisfaction with an act, omission, product or service that is (1) within the operator's control and (2) requires a corrective measure on the part of the cable operator."

In proposing a definition for complaint to be used within the new rules, the Board has taken under advisement the above definitions. The Board also considered the fact that most other states that regulate cable television on a state level, as well as the Federal Communications Commission (FCC) do not provide a definition of a "complaint." However, the Board also noted that the FCC, within its "Cable Bill of Rights" issued on April 1, 1999, did state the following regarding complaints: "(1) Consumers should expect a fair deal from their local cable company, with reasonable rates that fairly reflect the costs of doing business. (2) Consumers should expect an explanation from their cable companies whenever rates for the programming service tier are raised, particularly when cable companies attribute price rises to increases in the cost of obtaining programming. (3) Consumers are entitled to write or call their cable companies whenever they have complaints about the cable services being provided on the various channels, or about program cost increases, and they should expect a speedy response."

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The Board believes its proposed definition meets the plain reading of the statute and will enable the Board to correctly and fully receive a reporting of the complaints made to cable television operators by the State's 2.5 million cable television subscribers.

A 60-day comment period is provided on this notice of proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and N.J.A.C. 1:30-3.2 governing rulemaking calendars.

Social Impact

The proposed amendment defines a complaint. The Board believes it is necessary to define a complaint on its most basic level in order to capture subscriber concerns about service regardless of cause. The cable television industry claims that by defining what a complaint is, the Board is limiting the industry's ability to perform its customer service functions and may impact how quickly a cable television operator can answer its telephone lines and may put it in jeopardy of telephone answering standards, pursuant to N.J.A.C. 14:18-7.8. The reasoning for this is that the cable television industry contends it currently only records complaints on an escalated basis on issues that it considers within its control. The cable television industry does not consider a subscriber calling to complain about an issue that can be resolved on the CSR level a complaint and believes that to track each and every call that comes in would be burdensome and could lead to longer call times. The Board does not believe that the statute gives the Board the latitude to define a complaint only to those that are escalated. The Board has learned that the second largest cable television operator in the State, Cablevision Systems, Inc., has its CSRs record calls under 32 separate journal entries whenever a credit is issued to subscribers. The Board believes these journal entries are made to satisfy subscriber complaints because they include subjects such as "credit for poor customer experience," "on time adjustment to save or acquire customer" and "credit for verified missed appointment." The Board believes that the OCTV's reporting mechanism is less onerous than that used by Cablevision and if Cablevision can record 32 separate entries without any reduction in telephone traffic time, it should have no problem with recording the proposed 15 separate categories to be recorded on the form prescribed by the Director, in accordance with the statute.

The Board believes that the complaint must be taken at the initial point of contact in accordance with the statute, that is, by the CSR, and not on an escalated basis as argued by the cable television industry. In sum, the social impact is recognition of the customer's concerns about service regardless of cause.

Economic Impact

The proposed amendment imposes no direct or specific costs in and of itself. However, with its companion, N.J.A.C. 14:18-6.7, the cable television industry has claimed that it will cost the industry a significant amount of capital to modify its reporting mechanisms of how complaints are collected and retained. The Board believes that it may have some additional incidental impact on operating costs, which may, to the extent permitted under Federal cable television rate regulations, be passed on to the customer. All reasonable levels of expenses incurred by cable television companies in complying with this collection and reporting requirement will be

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considered an ordinary business expense, recoverable through rate and cost of service proceedings. Costs that may be incurred include those of an administrative nature for the collection and reporting. It is also anticipated that some added training of customer assistance staff may be necessary. Modification of computer recording screens may be necessary and for cable television companies that do not employ information technology staff or have information technology personnel on retainer, some professional services may be necessary. The costs of these services are, again, considered ordinary business expenses recoverable through rate and cost of service proceedings.

However, with the importance of N.J.A.C. 14:18-6.7 and the mandate by the Legislature, the Board believes that, in light of the absence of a full competitive market to preserve the public interest, the benefits from N.J.A.C. 14:18-6.7 and the amendment proposed herein exceed the burdens of the costs.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The amendment to N.J.A.C. 14:18-2.1 is not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for this proposal.

Agriculture Industry Impact

The proposed amendment has no impact on the agriculture industry.

Regulatory Flexibility Statement

There are no small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. to which the proposed amendment would apply. The businesses affected have more than 100 full-time employees and/or are based out of state.

Jobs Impact

It is not anticipated that the proposed amendment will result in the creation of new jobs or the loss of existing jobs. The proposed new rule will not have an impact on any other sector of the economy of the State of New Jersey.

Smart Growth Impact

The Board is of the opinion that the proposed amendment will have no impact on either the achievement of smart growth or the implementation of the State Plan.

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Full text of the proposal follows (additions indicated in boldface thus):

14:18-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

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Complaint means any written or verbal contact, including by telephone, by an assistive technology device for the hearing impaired such as TTY/TDD, a telecommunications relay service, in person, by facsimile, e-mail, or any other reasonable means, with a cable television operator in connection with any product or service it offers in which a person expresses discontent or dissatisfaction with an act, omission, product, service, service content or complement, term or condition of service.

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